

# SENATE BILL REPORT

## ESSB 6034

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As Amended by House, March 2, 2018

**Title:** An act relating to authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

**Brief Description:** Authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

**Sponsors:** Senate Committee on Energy, Environment & Technology (originally sponsored by Senators Rolfes, Sheldon, Angel, Hunt, Chase, Kuderer and Hasegawa).

**Brief History:**

**Committee Activity:** Energy, Environment & Technology: 1/17/18, 1/31/18 [DPS].

**Floor Activity:**

Passed Senate: 2/12/18, 45-2.

Passed House: 3/02/18, 94-4.

**Brief Summary of Engrossed First Substitute Bill**

- Authorizes certain public utility districts (PUDs) to provide retail telecommunications services.
- Provides a process for petitioning the PUD board of commissioners (commissioners) for retail telecommunications services.
- Requires an administrative hearing for dispute resolution for adequacy of Internet service.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

**Majority Report:** That Substitute Senate Bill No. 6034 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Ericksen, Ranking Member; Brown, Hawkins, Hobbs, McCoy, Ranker, Sheldon and Wellman.

**Staff:** Jan Odano (786-7486)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** The powers of PUDs and port districts are governed by statutes and a long history of court decisions. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

PUDs and rural ports that were in existence on June 8, 2000, are authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

Currently, the sections of statute authorizing districts to provide wholesale telecommunications services include the provision: "Nothing in this subsection shall be construed to authorize public utility districts [or rural port districts] to provide telecommunications services to end users." However, the term end user is not defined in the statute. In 2001, Attorney General Opinion No. 3 concluded that end user means retail customer, and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies.

PUDs and rural port districts are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. Revenues from wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

The Utilities Transportation Commission (UTC) is authorized to review petitions brought by customers concerning a PUD's wholesale telecommunications rates, terms, and conditions.

**Summary of Engrossed First Substitute Bill:** A PUD that provides only water, sewer, and telecommunications services in a county with an area less than 500 square miles and west of Puget Sound, may provide, or contract for, end user Internet services on the PUD's broadband network.

After receiving a petition requesting retail Internet services, the commissioners may hold three meetings to verify petitioners' signatures; determine and submit findings regarding the existence or adequacy of retail Internet services; and by resolution, authorize the PUD to provide retail Internet services or connectivity.

The petition must declare that there are no or inadequate retail Internet service providers on the PUD's broadband network. The petition to request retail Internet services may be submitted by a majority of a group, including homeowners, within the PUD's geographical area, or an individual who has a partnership payment structure to finance broadband deployment with the PUD.

Adequate retail Internet service is determined by measuring retail Internet service in the area and comparing it to service standards in the PUD service level agreement used for all PUD district network providers. The service measurement must be quantified by measuring the service with speed and capacity devices and software. A retail Internet service provider may submit its own service assessment to the commissioners for consideration. The service assessment must be submitted within 30 days of the commissioners' first meeting on the petition requesting retail Internet services.

The commissioners may authorize a PUD to provide or contract for Internet services on the PUD's broadband network, as petitioned by the end users, when it has determined that service is inadequate or non-existent.

The commissioners must request an administrative law judge to hear Internet service adequacy disputes. The commissioners must provide written notice and may require disputing parties to attend the hearing. The administrative law judge must make and file a determination on the adequacy of retail Internet service with the commissioners. A company regulated by the UTC may request resolution of internet service disputes through the UTC process for reviewing wholesale telecommunications.

The PUD must offer fair and nondiscriminatory rates for retail Internet service. The PUD may set tiers of charges based on user service demands.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill would allow service to be provided in underserved and unserved areas. It would limit the authority to where there is no ISP or inadequate service. It will provide service for people who need it and are willing to pay for it.

OTHER: We would have concerns if the scope of this bill were to expand. There are problems with the bill in that certain terms are not defined and the dispute resolution should go to the UTC. We need to ensure competitive parity.

**Persons Testifying:** PRO: Jim Civilla, Kitsap PUD; Paul Avis, Kitsap PUD; Lisa Thatcher, Kitsap PUD.

OTHER: Dave Arbaugh, Chelan PUD; William Bridges, CenturyLink.

**Persons Signed In To Testify But Not Testifying:** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Expires the authority for any PUD that has not begun providing retail Internet service within five years of the effective date of the act.
- Subjects a PUD exempt from property tax to an annual payment in lieu of taxes for broadband network property used for providing retail Internet services.
- Requires PUDs to develop a business plan prior to the commission authorizing the PUD to provide Internet services.
- Requires the Department of Revenue to provide annual reports on payment in lieu of taxes and the amount of property taxes that would be owed on the broadband network used in providing retail Internet service.
- Prohibits a PUD from conditioning other services on the purchase of retail Internet service.
- Requires a PUD to provide to all entities retail Internet services within the authorized geographical as requested.
- Requires a PUD to separately account for retail Internet services.
- Requires rates to be "just, fair and reasonable" instead of "fair and nondiscriminatory."